CALLING ATTENTION TO MATTER OF URGENT PUBLIC IMPORTANCE

The System of Counter-Guarantees and other Assurances given by Government in the Context of foreign investment in power Sector

SHRI K. R. MALKANI (Delhi): Madam Deputy Chairman, I rise to call the attention of this House to the system of counter-guarantees and other assurances given by the Government in the context of foreign investment in the power sector.

THE MINISTER OF POWER (SHRI N. K. P. SALVE): Madam, The Private Power Development Policy of the Government of India was introduced in 1991 with the objective of bringing in additionality of resources from private sector in the background of acute power shortage and severe resource crunch faced by the central and state governments, and Public Sector Undertakings (PSUs) and the State Electricity Boards (SEBs), and a very disconcerting future of power availability. This was followed by necessary legislative amendments, complementary administrative framework, and a two part tariff notification in March, 1992.

I should like to inform the House how the question of Government of India counter guarantee originated. Soon after the introduction of the policy, a high level delegation visited London, New York, and Houston in May-June, 1992 to apprise the international investor community about our new policy and to attract private investments in power sector. In response to these presentations, the companies who agreed to consider putting up power projects expressed concern about the poor financial track record of SEBs who would be the bulk purchasers of power from the private companies. They wanted Government guarantees that the SEBs will pay for the power purchased. While discussing the general policy issues regarding private sector investment in power, the government considered three alternatives for security of payments by the SEBs—(1) escrow account between investor, SEB and commercial bank, (2) state government guarantee backed by GOI counter guarantee, (3) handing over industrial/high tension consumers directly to the private companies.

In the course of further discussions the companies invariably asked for GOI counter guarantee as they felt that the other two alternatives did not provide enough comfort and security of SEBs' payment obligations, specially from the viewpoint of the confidence of the financiers. It was conveyed that the lenders would not accept anything less than the GOI counter guarantee. I am sure, the Hon'ble Members are aware that the private power projects are largely financed by borrowings, therefore, they are driven to a large extent by lenders' requirements. It was felt that the GOI counter guarantee was an unavoidable prerequisite at least for the initial batch of projects to enable them to raise finances. Absence of counter guarantee would perhaps mean the projects not coming at all in the private sector, thereby making the very policy of attracting private sector a non starter.

Accordingly, it was agreed in principle to extend the GOI counter guarantee to the initial 7 projects that had been approved by the Government for foreign investment. We believe that once the investors and lenders gain confidence about investing in Indian power sector, which has to be necessarily supported by demonstrable improvement in the SEBs, the counter guarantee from the Government of India will not be needed in future. Therefore, the Government does not propose to give counter guarantee indefinitely, and future projects will be examined on a case to case basis. Also it was necessary to send a message to the prospective investors that Government of India trusted the SEBs and the states to implement the Policy, and were not inviting the investors into a trap of bad debt.

I may inform the House that in respect of no private power project a counter guarantee has yet been executed. However, the documentation in respect of the first counter guarantee has been discussed and it is expected to be executed shortly. I would like to share with the Hon'ble Members some salient features of the proposed counter guarantee.

(i) Government of India is secondary obligor liable to pay only in case of

default by the State and GOI shall adjust such payment against share to taxes, plan assistance and grants.

(ii) Such arrangement has been cleared by the Law Ministry as legal and valid.

(iii) Duration of the guarantee would be 10—12 years whereas Power Purchase Agreement may be over 20 years.

(iv) No foreign exchange availability and repatriation is guaranteed in the counter guarantee, the same will be governed by normal RBI rules.

(v) No minimum return on equity is assured in the counter guarantee.

(vi) To be eligible to avail counter guarantee, the State Electricity Boards must have the requisite rate of return (ROR). The States also have to ensure that the SEBs shall maintain receivables and payables within prescribed norms.

(vii) The counter guarantee when available would be to a generating company whether owned by a foreigner or by an Indian or jointly by foreigner and Indian.

(viii) In case of termination of the PPA, the GOI's liability in the counter guarantee is limited to outstanding foreign debt only with GOI being given first charge on the Power Station.

(ix) The scheme thus obviates risk of any burden on the Government of India in case it is required to pay to the generating company in terms of the counter guarantee.

There has been some uniformed comment that arbitration outside India under UNCITRAL rules amounts to erosion of sovereignity. I must emphasise that the substantive law governing the counter guarantee shall be the Indian law. For dispute resolution, first conciliation will be held in India under the Indian law. Only such disputes not resolved through conciliation will be referred for arbitration. The arbitration outside India is being considered as the companies have pleaded for this in view of the delays in Indian court proceedings. Arbitration in a third country under some recognised international convention is a common feature in such international agreements.

I should like to emphasise that the question of countrer guarantee arose because of perception about poor track record of the SEBs. The guarantees by the State Governments were also not considered adequate by the international investors as the States have no history of directly accessing foreign funding, hence they have no credit rating. Therefore, the States on their own could not attract the massive investments required from abroad and internally, and the Central Government had to come forward to help the States in their endeavour for attracting private sector investment. I am sure this House which embodies the aspirations of the States will whole heartedly support the approach of the Government of India in helping out the States which desperately need investment in the power sector. Here, it will not be out of place to reiterate the dismal prospects of future investment in public sector. The Members may be aware that the need for capacity addition in the 8th Plan was 48000 MW. But in view of the resource availability, only 30537 was proposed to be added at the behest of the Planning Commission. Even with this addition, the power shortage in the terminal year of the 8th Plan was to remain same as at the beginning i.e. about 9% in terms of energy and 18.5% in peaking shortage. The resource mobilisation so far in the public sector has been far short of the expectation. Consequently, the addition in the 8th Plan is not likely to exceed 2000 MW, which would make the shortages in the terminal year much worse than the present, the expected shortages being 14.5% in terms of energy and 28.2% in terms of peaking power. We have also not been able to arrange additional finances for some projects in the central public sector which could be started in the 8th Plan and which could spill over in the 9th Plan. This would adversely affect the prospects of capacity addition in the 9th Plan in the public sector, and there is no alternative for the States but to make all out efforts to attract more and more private investment to somehow supplement the efforts

of public sector, to avoid dangerous prospects of power famine.

I hope, Madam, I have able to put forward all the major issues which may engage the attention of the Hon'ble Members.

उपसभापति: मलकानी जी, अगर आप आगे आकर बोलना चाहें तो बोल लीजिए। आप सिकन्दर बख्त साहब की जगह पर आने चाहें तो आ जाइए।

As he is raising the Calling Attention Motion in this House, he should be allowed to speak from there.

SHRI K. R. MALKANI: Madam Chairperson, more than two months back I made a Special Mention on this subject in this House. The normal practice is that the Minister responds to points raised in the Speical Mention. I have heard it from the Prime Minister. But, I am sorry to say, that I did not hear it from the hon. Power Minister and I am not surprised because in the case of points raised now and the points that have been raised outside, the hon. Minister's statement does not answer those objections. He said that under the globalisation and liberalisation policy he has sent men abroad to Houston and London and God knows where. What was the necessity of sending the people? Why did he not issue global tenders which is elementary? He said a huge amount of money is involved and he says 'A' to speak to 'B', 'C', 'D'. What is that idea? Our experience says that in the case of fertilizer plants, when we negotiate with the individual parties they go pretty high and when we call for the global tender the prices come down by 30 to 40%. This is elementary. Why was it not done? I hope that the hon. Power Minister is aware that lots of people, a lot of 'sharks', I would say, all over the world are looking at India with greedy eyes. "Foreign banks are fighting to grab the power sector". This was the heading of one of our leading newspapers. They know that there is a lot of money going around in India, and so, they think they sould go and grab it. Behind these socalled power companies are also foreign banks looking for easy profits. They think that a big bonanza is waiting for them. Sir, if I am wrong anywhere, the hon. Minister would correct me. Is it a fact that the agreement that is being negotiated with the Enron says that the next of the agreement shall not be published and if so, why? Transparency is essential for democracy. I am told that in Maharashtra, the people have been told that the MLAs can go to the Speaker's Chamber and have a look at the papers. Now, how many legislators either at the State level or at the Central level are technical experts or cost accountants? They will not be able to make much sense of it. Why can't we make this agreement available to the public and to our experts to examine it? What is the objection? Is there anything to hide? The hon. Minister referred briefly to the point that arbitration will be referred to third countries. Why? He commented on the Indian courts. Indian courts do not descend from heaven. A certain party has been in power in this country, you appoint the judges, you pass the laws, and then why are you blaming the judiciary? Improve it, if you can, but how can you allow this kind of a matter that in case of any dispute between India and Enron the matter would be decided in London? Why? I think, it does amount of abridgement of our sovereignty? also amounts to contempt of all ours courts. We take things too lightly.

Coming to the substantive part of this agreement, Sir, there exists a very funny situation. According to the Economic Survey of India, the power shortage at the peak time is 19%. According to the Power Ministry it is 30%. I suggest that the Finance Ministry and the power Ministry should sort out their problems and then come before the Parliament and the public.

I have another suggestion to make. You see, oil is not a renewable item. There is a lot of wind power, water power in the country. What has been done to mobilise that? We have the mighty Himalayas, the perennial rivers, the waterfalls the Western Ghats in Maharashtra itself. What effort has been made to go into this matter? It is a potential. Madam, is it true that only 25% of the potentiality of hydro-electric power in India has been mobilised and 75% remains unused? Why? This should be not only cheaper but also environmentally more sound.

We have decided to buy gas from Qman. I am reminded of the scheme of Tughlak. Even Tughlak was shifting the capital from Delhi to

Devagiri or Daulatabad in Central India, but in this case, we want to import liquid gas from Oman, 14,000 kms away. I hope there will be peace and order and nothing happens. But, we have had wars, more than one. What happens if there is another war? Who will secure your pipeline? Enron?

We are flaring away our gas in Bombay High. We say that we do not have enough money to pipe it to Bombay. But we have money to get this all the way from Oman? is it true that the World Bank has stated that the whole project is economically and technically unsound? I would request the honourable Minister to make this World Bank report on the subject available to the Parliament and the public.

Is it true that the National Working Group on Power Sector which includes some of the topmost engineers, technicians, electricians and cost accountants of the country has said that the whole project is, I am quoting, legally questionable and morally indefensible?

I come to the issue of guarantees. I must say that I had never before heard of a thing like sovereign guarantees and counter guarantees. I do not know what these are. Maybe the honourable minister can throw some light these and tell us what the distinction is. We are for globalisation and liberalisation. Why these guarantees? Let them come, let them set up plants, let them show results and let them have profits. In this case, we assure them, we assure Oman, that we will purchase every day gas worth Rs.6 crores, whether we need it or not. You will assure Enron, that 90% of its power generated will be bought by the Maharashtra State Electricity Board under the guarantee. MSEB may not need it. Why is there high-cost power on Maharashtra State Electricity Board? We have assured 16% return. Why? Last time, when the hon. Power Minister was here, he said that inflation rate was about 14% and a guarantee of 16%, 2% more, did not make much difference. I am extremely sorry that he came up with this kind of an argument. This guarantee is on equity capital which will come from abroad. What are the interest rates in America? Four, five per cent. I wish he did not quote the Indian interest rates. He is misleading the House. I happened to read recently in the international press that China is also trying to have some kind of arrangement with foreign companies. In the reports I have not seen any reference to any counter guarantee or sovereign guarantee. If they have said, you can raise the tariff to the point where you can make 15% profit. It is not 16% as in our country. China has bargained for 15% and there is no reference to counter guarantee or sovereign guarantee.

Is it true that even the NTPC and the NHPC have not been given any such guarantee? I understand that Shri Ashok Modi who Co-authored the World Development Report, 1994 has called these guarantees 'perverse'. He has also called it 'the worst kind of incentive'. A former Chairman of the Punjab Electricity Board Shri N.S. Vasant has said that this kind of agreement will kill all our State Electricity Boards. Shri G.V. Ramakrishnan, Member of the Planning Commission has said that he is all opposed to it. What happens to the cost of this arrangement? For an installed capacit of one megawatt if we go to BHEL, it costs less than 2.5 crores. With ENRON it will cost more than 3.5 crores. The cost per unit in India is about one rupee but with ENRON the cost will be 2.4 rupees. Who is going to pay for it? Will it not affect the cost of production? Will it not affect even our exports?

The hon. Minister has been very candid. He said on 12th of July that there would be a substantial increase in energy tariff and subsidies are out. Would he like to inform the House and the country as to what will be the degree of that substantial increase? Will power tariff double, triple or quadruple, what is going to happen? Let the Minister be clear. He says subsidies are out See, for example, power is made available at a very concessional rate for agriculture. It it going to be reduced or entirely cut? We expect the Government to come clean on these issues. Today in several States power is given to Scheduled Castes and Scheduled Tribes families. Is it going to be reduced or is it going to be cut? Let the hon. Minister for power take a position and be clear. If tariff is going to be high for power, I am sure if you give the revised tariff to Electricity Boards they will give you all the power that you want. They will flood you with power. When you pay them Rs. 2.4 instead of Re.1 see what happens. I am reminded of what happened 20 years ago, in early seventies. We used to be perennially short of foodgrains. I am

proud that my party and Shri Charan Singh maintained that the procurement price must be raised and the moment the price was raised there was no longer shortage of foodgrains. Today the Prime Minister proudly says that he does not know where to store the foodgrains. So, if you really want power production to go up, you do not have to run to Houston and New York. You have just to go to Gujarat, Maharashtra, karnataka and other State Electricity Boards and tell them, You can charge a little more, and they will give you all the power, you need.

Sir, I am sorry about the comments that the hon. Minister for Power has made about the State Electricity Boards. They are your babies. You treat them as your subordinate departments. They are not autonomous in any sense of the term. You create them you spoil them, you do all kinds of things with them and now you are talking of track-record. Please look at your own track-record how you have set up them. How you have monitored them. You have ruined them. Only yesterday I was reading a report that in Delhi the Delhi Electricity Supply Undertaking finds that 43 per cent of its power is stollen.

Who is supposed to stop it, if not the Government? Who has the police power? Our SEB's are thoroughly starved of funds.

I would like to draw the attention of the hon. Power Minister to one other issue, and that is the over-valuing of assets. This is common with many companies, Indian or foreign. They overvalue their assets and than they expect their returns and guarantees based on that. They inflate their project costs. Now, BHEL turbines are of world class, world quality. They are much cheaper, about 30 per cent cheaper. Is there any clause in your draft agreement which requires Enron and other companies to buy only BHEL equipment? If not, why not? It is world class. They have collaboration agreement with the General Electricals. All that the hon. Power Minister is willing to concede in his pamphlet which I was reading last night is that foreign MNCs are likely to purchase BHEL equipment. Why should we be at their mercy? Why should we not go in for our own local product which is much more cheaply available? Earlier I referred to the Chinese no counter-guarantees, and the return is also one per cent less. In China, there are something like 47,000 joint projects. And the Chinese feeling was that these investors were over-valuing their assets. Recently, they investigated these 4,000 cases, less than 10 per cent. And they claimed an assests value to be 1.3 billion dollars. On actual assessment it was found that it was only 900 million dollars. The Chinese insisted that these foreign companies return this amount of 400 million dollars. I hope, I pray that there are people in the Government of India who have the wit, the wisdom, and the will to go into these matters, that if they find that there is an over valuation of assets, it will be cut and the money will be restored to the Government of India.

In conclusion, I only say this. Charity is said to begin at home. But when it comes to the Power Ministry of the Government of India charity seems to begin abroad. I am sorry to say that all that the hon. Power Minister has been saying amount to advocacy of Enron. I am extremely sorry to say this. That is all I have to say, Madam. Thank you, very much.

SHRI N.K.P. SALVE: Madam, I want to make one point clear to you, on a point of order. The subject matter of the Calling Attention, Madam...(*Interruptions*)

THE DEPUTY CHAIRMAN: He wants to clarify something.

SHRI N.K.P. SALVE: I want to clarify. Madam, it is this. The Calling Attention Motion has referred to the system of counter-Guarantees and other assurances given by the Government in the context of foreign investment in power sector. Madam, since this is the subject matter, I am obliged to reply only to that which relates to counter-guarantee and other assurances. What will happen ultimately, Madam? Ninety per cent of the things the hon. Member has said are utterly unrelated to this; they may be related to power sector, but not related to this subject in the power sector. Therefore, Madam, I beg of you to kindly ensure that whatever is asked of me is in respect of the subject for which a Calling Attention has been allowed. Otherwise, a difficulty will arise...(*interruptions*)

THE DEPUTY CHAIRMAN: Let him finish.

SHRI N.K.P. SALVE: Otherwise, a

difficulty will arise, a complaint will be made to you that I am not answering all the questions, questions which are irrelevant to the subject for which there is a Calling Attention Motion.

SHRI S. JAIPAL REDDY: Madam...

THE DEPUTY CHAIRMAN: I will call you. First let the Minister finish.

SHRI N.K.P. SALVE: I tell you, Madam, therefore that if the debate is confined to the subject, it will be very helpful and we will be able to discuss this serious matter.

SHRI S. JAIPAL REDDY (Andhra Pradesh): Madam, I am rather surprised by the objection raised by the Minister. He has not read the text of the Calling Attention motion correctly In my view. It refers to a system of counter-guarantees and other assurances given by the Government in the context of foreign investment. Under other assurances a 16 per cent guarantee return and repatriation of profit in foreign exchange, all these—are covered. Therefore, it is incorrect on the part of the Minister to impose a restriction on the scope of the debate. We have no illusion about his willingness or capacity to answer our questions, but let him not raise objection to the question themselves.

SHRI N.K.P. SALVE: Madam, I want to respectfully submit that a part of the matter relates to the two-part tariff. What are going to be the norms for the fixed cost, what are going to be the norms for the variable cost, these do not constitute any assurance whatsoever on our part. What constitutes an assurance is which have gone over and above the other tariff formulae. In respect of the counterguarantee, what is our undertaking? Are we given any assurances over and above that, which is part of the two-part tariff, which is not on assurance? The 16 per cent return is part of the two-part tariff. That is why I want to submit, let us not quarrel over disinformation, minisformation, lack of information and lack of knowledge, and let it not stand in the way of what I may have to reply, because I do not want to be accused of not replying to all the questions. That is why I have put this point before you. I would request you to determine as to what is relevant and what is not relevant.

श्री चतुरानन मिश्र: मंत्री महोदय ने....(व्यवधान)

THE DEPUTY CHAIRMAN: Before we continue, I have to take the consensus of the House about the lunch hour.

SHRI H. HANUMANTHAPPA (Karnataka): Madam, occasionally we can skip the lunch hour, but that should not be made a routine.

SOME HON. MEMBERS: Yes.

THE DEPUTY CHAIRMAN: Okay.

श्री चतुरानन मिश्र (बिहार): मैं सिर्फ इतना ही कहना चाहता हूं कि यह जो एग्रीमेंट किया गया है उससे भी ज्यादा हास्यापद हमारे मंत्री महोदय का पौंइट आफ आर्डर है।...(व्यवधान)

श्री एन. के. पी. साल्वे: यह नहीं कहा कि वह हास्यास्पद क्या है?

श्री चतुरानन मिश्र: वही कह रहा हूं। अगर मान लीजिए हमने पाया कि यह एश्यूरेंस तय है इसका रिपेटरिएशन इंडिया में यह होगा, तो हम यह कहने के पूरी अधिकारी हैं अगर आपने उसको ज्यादा रेट दे दिया और अपने इलैक्ट्रिसिटी बोर्ड को नहीं देते हैं। जैसा कि माननीय मंत्री महोदय ने कहा। आप एश्यूरेंस दिए हैं या नहीं दिए हैं, यह एक ऑटोमेटिक हमारा अधिकार होता है आपको कहने के लिए। एक तो आप इस तरह से एक लज्जा का यह एक एग्रीमेंट करते हैं और दूसरी तरफ फिर यह हास्यास्पद सुझाव रखते हैं, हाउस के अधिकार को रेक्ट्रेस्ट करते हैं, बोलने के अधिकार को रेस्ट्रेक्ट करते हैं। यह आपके जैसे आदमी को शोभा नहीं देता है। सीधे-सीधे जो एग्रीमेंट किया है वह खुलकर आप रखते तो नहीं हैं, राष्ट्र के सामने और एश्यूरेंस की बात करते हैं। जो पी.पी.पी. है उसको आप रखते क्यों नहीं हैं? अगर इतनी बात है तो सारे कागज रख दीजिए।...(व्यवधान)

श्री एन. के. पी. साल्वे: महोदया, मिश्र जी की बात सर आंखों पर।...(व्यवधान)

श्री सुन्दर सिंह भंडारी (राजस्थान): सवाल तो यह है कि डिबेट रिस्ट्रेक्ट होगी क्या?

THE DEPUTY CHAIRMAN: Please. Let him answer...(*Interruption*)... Let us have this discussion in a very peaceful atmosphere....(*Interruptions*). Let him answer.

SHRI SATISH AGARWAL (Rajasthan): One minute. It is in your own interest. It is a very prestigious issue...(*Interruptions*)...

श्री एन. केपी. साल्वे: मैं सिर्फ...(व्यवधान) मैडम, मेरा पोइंट आफ आर्डर समझ लें।...(व्यवधान) मैं यह नहीं कर रहा हूं मैडम्... (व्यवधान)

THE DEPUTY CHAIRMAN: Mr. Agarwal, I am sorry. Please sit down...*(Interruptions)*... No more discussion now. Mr Narayanasamy, you also please keep quiet. Nobody should speak when the Minister is on his feet. Please take your seats.

SHRI N.K.P. SALVE: Madam, I have not framed this Calling Attention.

SHRI DIGVIJAY SINGH (Bihar): Madam, you are not giving us a chance to speak.

THE DEPUTY CHAIRMAN: I will give you two hours to discuss this whole issue.

SHRI DIGVIJAY SINGH: On this particular issue that the Minister is raising.

SHRI N.K.P. SALVE: I am on an important point of order, Madam. ...*(Interruptions)*:

THE DEPUTY CHAIRMAN: One minute, please. What did I request? At least you listern to my request. I am not the Minister.

SHRI N.K.P. SALVE: Madam, it is not I who has framed this Calling Attention. It is not I who has admitted this Calling Attention. If the Calling Attention were on ""the position of private power sector.development in India," all these questions would have been relevant. Since it is specifically related to the counter—guarantees and assurances, I will explain them.

SHRI S. JAIPAL REDDY: And other assurances.

SHRI N.K.P. SALVE: I will explain the assurances. ...*(Interruptions)*

THE DEPUTY CHAIRMAN: He is agreeing to it. Please listen to him. He is agreeing to it. He is not disagreeing to it. He is agreeing to it, please.

SHRI N.K.P. SALVE: I am liable to explain the assurances. A question will arise whether something which is a part of the fixed cost becomes my assurance...*(Interruptions)* Return of 16 per cent is a part of the fixed cost. It is a two-part tariff formula. Does it becomes my assurance? It is not an assurance of the Government of India....*(Interruptions)*

SHRI S. JAIPAL REDDY: If the Government of India does not issue a notification, no State Electricity Board can enter into an agreement...*(Interruptions)*

SHRI DIGVIJAY SINGH: He has given counter-guarantees. For what?

SHRI N.K.P. SALVE: That is a relevant question. I will answer that . What is the counter-quarantee for? What is my liability? What are the salient features?

...*(Interrutions)*

Madam, I will not be able to give any information beyond the counter-quarantee. *(Interruptions)*

THE DEPUTY CHAIRMAN: Now, I will not allow it, please I once again request the Members humbly. The Chair does not need to be humble with the House, but I do.

We want a discussion on this. It was concerning the Members. We have got into a habit of having a running commentary when somebody is trying to explain something....*(Interruptions)*

The Minister is saying something. Please. I am watching everything. Jaipalji, now I am speaking and you are shouting. When I start speaking, you get up. What is this? Is it the way to run the House?

Now, first I have to decide whether we are going to have the lunch hour or not.

SOME HON. MEMBERS: Yes, yes.

THE DEPUTY CHAIRMAN: We are going to have the luch hour.

Okay, the House is adjourned for luch for one hour.

The House then adjourned for lunch at thirty-eight minutes past one of the clock.

The House reassembled after lunch at forty-one minutes past two of the clock,

The Vice-Chairman
(Shri Satish Agarwal)
in the Chair.

CALLING ATTENTION TO MATTER OF URGENT PUBLIC IMPORTANCE

The system of counter guarantees and other assurances given by the Govt. in the